IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Court's order whether the case is or not approved for reporting

(Chapter VIII, Rule 32(2) (b)

Description of Case

Crl. Appeal No. 250 of 2001.
(Old No. 1893 of 1985)

Date of decision:- 15-6-2006

A.F.R. (Approved for Reporting)

~~Not approved for reporting~~

Date :- 15-6-2006 Initials of Judge

Note:- Bench Reader will attach this at the top of the first page of the judgment when it is put up before the Judge for signature.

HIGH COURT OF UTTARANCHAL AT NAINITAL
Criminal Appeal NO. 250 OF 2001
(Old No. 1893 of 1985)

1. Mohan Ram S/o Jas Ram
2. Kunwar Ram S/o Mohan Ram
3. Bhupal Ram S/o Mohan Ram
4. Chanar Ram S/o Mohan Ram
5. Bahadur Ram
6. Prakash Ram S/o Bahadur Ram
7. Smt. Haruli Devi W/o Mohan Ram
8. Smt. Motima Devi W/o Mohan
   All R/o village Jakhera
   Pattimala katyur
   District Almora ...Appellants

Versus

State ....Respondent

Date:- 15th June, 2006

Sri Arvind Vashistha learned counsel for the appellants.
Sri Lalit Verma learned A.G.A. for the State.

Hon'ble J.C. S. Rawat, J.

1. This is a criminal appeal against the judgment and order dated 21.06.1985 passed by Sessions Judge, Almora in S.T. No.16/1982, whereby the appellants were convicted under sections 147, 225 r/w section 149, 332 r/w section 149 and 395 IPC. Mohan Ram, Kunwar Ram, Bhupal Ram, Bahadur Ram, Chanar Ram and Prakash Ram were sentenced to undergo R.I. for a period of six months each on each count under sections 147, 225/149, 332/149 IPC. They were further sentenced to undergo R.I. for a period of one year under section 395 IPC. Smt. Haruli Devi and Smt. Motima Devi were sentenced to undergo R.I. for a period of three months each on each count under section 147, 225/149, 332/149 & 395 IPC. All the sentences were to run concurrently.

2. Brief facts of the case are that on 02.05.1980 Ghananad Joshi, Supervisor Kanoongo received

information that Mohan Ram was preparing illicit liquor. On receiving this information he called witnesses Khim Singh and Trilok Singh. He alongwith these witnesses and Thakur Singh-Patwari and two peons i.e. Chandra Datt and Madho Ram reached at the spot and recovered a jerican containing illicit liquor from the possession of Mohan Ram. Thereafter, the fard-recovery was prepared at the spot. The seized liquor was sealed and Mohan Ram was taken into custody. When they were proceeding with the accused, Chanar Ram reached there with a Sabbal. He asked the Kanoongo to release the accused and the recovered liquor but the Kanoongo did not concede to his threat. Chanar Ram started shouting after which the remaining accused persons also reached there. It was further alleged that Smt. Motima Devi and Smt. Haruli Devi were armed with Daratis and the remaining accused persons were armed with Lathis. The accused persons snatched the jerican and took away Mohan Ram from the custody of the authorities. The accused persons also threw stones as a result of which Trilok Singh received injuries. The report of the incident was lodged with the Kanoongo, Jakhera. Thereafter, the revenue police investigated the matter and submitted the chargesheet against the appellants.

3. The appellants were charged by the trial court. The appellants denied the charges and claimed the trial.

4. In order to prove its case, the prosecution has examined four witnesses. Ghananad Joshi (PW1) was the Supervisor Kanoongo, who received information that Mohan Ram was preparing illicit liquor. The

prosecution had adduced the evidence of Trilok Singh (PW2), who accompanied the Kanoongo and his companions for the seizure of the illicit liquor. The prosecution had also examined Rajendra Singh (PW3), who is the investigating officer of the case. Dr. D.K.Niranjan (PW4) was the medical officer in the State Aryuvedic Dispensary, Jakhera and he conducted the medical examination of the injured-Trilok Singh (PW2) on 02.05.1980 at 4pm.

5. The statements of the accused-appellants were recorded under section 313 Cr.P.C. The appellants had stated they have been falsely implicated in this case.

6. On consideration of the entire evidence on record the learned trial court convicted and the sentenced the appellants as mentioned above.

7. Feeling aggrieved by the judgment and order of the trial court, the appellants have come up before this Court.

8. Learned counsel for the appellants contended that the prosecution had not proved the case against the appellant beyond reasonable doubt and the trial court erred in convicting the appellants. It was further contended that the trial court had not proceeded with the evidence in the correct manner. The genesis of the story is not proved from the evidence on record. Learned A.G.A. refuted the contention. The prosecution had adduced the evidence of Ghananad Joshi (PW1), who was the Supervisor Kanoongo. He had stated that on 2.5.1980 he received an information that one Mohan Ram of village Jakhera was preparing illicit liquor. On

receiving this information, he called witnesses Khim Singh and Trilok Singh, He alongwith the witnesses and Thakur Singh-Patwari and two peons i.e. Chandra Datt and Madho Ram reached at the spot and recovered a jerican containing illicit liquor from the possession of Mohan Ram. Thereafter, the fard-recovery was prepared at the spot. The seized liquor was sealed and Mohan Ram was taken into custody. When they reached near a 'khandar' (dilapidated building) Chanar Ram reached there armed with a Sabbal. He asked the Kanoongo to release the accused. When the said demand was not fulfilled, Chanar Ram started shouting upon the raiding party and thereafter the remaining accused persons also reached there. He had further stated that Smt. Motima Devi and Smt. Haruli Devi were armed with 'Daratis' and the remaining accused persons were armed with Lathis. The accused persons snatched the jerican and took away Mohan Ram from the custody of the authorities. The accused persons also threw stones upon the raiding party and as a result of which Trilok Singh received injuries. The prosecution had adduced the evidence of Trilok Singh (PW2), who was injured in the incident and he had supported the prosecution version. Dr. D.K. Niranjan (PW4) was the medical officer in the State Ayurvedic Dispensary, Jakhera and he conducted the medical examination of the injured-Trilok Singh(PW2) on 02.05.1980 at 4pm and he found the injuries on the person of the injured as mentioned in subsequent para 12. The doctor has given his opinion that the injuries could be caused by the sharp edged weapon at the time of incident. At one place he had opined that the injuries on the ear of Trilok Singh

could be caused by the pointed stones and at the same time he had stated that it cannot be caused.

9. Learned counsel for the appellants contended that the story as has been narrated is not credible and cogent. He further pointed out that the prosecution has taken a case that Mohan Ram was apprehended by the raiding party, but as a matter of fact he was not arrested by the raiding party. Learned A.G.A. refuted the contention. The arrest of Mohan Ram has been supported by the oral evidence. It is true that there was no memo of arrest under section 60 of the Excise Act. When a person is arrested it is obligatory on the part of the arresting officer to prepare the memo of arrest and thereafter he has to explain the grounds of arrest. The memo of arrest is not available on record. If Mohan Ram would have been arrested, the prosecution would have definitely produced the said documents. The prosecution had only given the oral evidence of Trilok Singh-PW2 and Ghananand-PW1 that the appellant-Mohan Ram was apprehended by the police. If the document is supposed to be written in accordance with law, the memo of arrest must have been prepared. In absence of the documentary evidence, which could have been produced by the prosecution, the oral evidence is not admissible under the provisions of the Indian Evidence Act. It is not amply proved that Mohan Ram was under the custody of the raiding party. I am completely in agreement with contentions of the learned counsel for the defence. If the prosecution had not proved the arrest, it cannot be said that Mohan Ram was got released from the possession of the raiding party.

10. It was further contended that Ghananand Joshi-PW1 had received information that Mohan Ram was the manufacturer of the illicit liquor. When the raiding party reached at the spot no equipment of manufacturing the illicit liquor was found from the possession of Mohan Ram. Perusal of the record reveals that Ghananand Joshi-PW1 had categorically stated that he received the information that Mohan Ram was the manufacturer of illicit liquor. The evidence also shows that on being made search only a jerican of 10 litre containing illicit liquor was recovered from his possession. As such, the story placed before this court does not seems to be plausible.

11. In the instant case, Trilok Singh PW2 had stated in his evidence that he appeared before the trial court in the case under section 60 of the Excise Act and stated that on account of crowd at the spot he did not identify accused persons except Bahadur Ram, Chanar Ram and two ladies. He further stated that he had sustained injury in the finger of his foot due to pelting stones thrown by Motima Devi. He further stated that when he tried to stop the accused persons he also sustained injuries on his finger. This statement has been proved by the Naib Tehsildar. Thus, the prosecution has entirely replaced the accused and he stated that Motima Devi had caused the injury instead of Haruli Devi. Apart this, PW1-Ghananand Joshi had stated in his cross examination that the appellants had not assaulted any of the public servant present at the spot and they only assaulted Trilok Singh-PW3. He had also stated in his cross examination that the appellant-Mohan Ram and Bahadur Ram snatched the seized illicit liquor from the raiding party and rest of the

appellants got released Mohan Ram from the custody of the raiding party. When he was contradicted with the statement recorded under section 60 of the Excise Act before the trail court that he had given the statement that the appellants who snatched the illicit liquor could not be named and he did not know the name of the appellants who got released Mohan Ram from the custody of the raiding party. He could not offer any satisfactory explanation. The genesis of the story is completely changed and there are certain developments during the evidence. The discrepancies as pointed out by the learned counsel for the appellants are of such consequences, which can be named as the boulders for the prosecution story. The discrepancies found in the ocular account of witnesses have affected the credibility of the evidence of the witnesses.

12. There is another discrepancy in this case. Dr. D. K. Niranjan PW4 had medically examined the injured-Trilok Singh(PW2) on 02.05.1980 at 4pm. The following injuries were found on the person of injured-Trilok Singh:-

(i) Abrasion on the left pinna 1cm x ½ cm outer surface.
(ii) Abrasion right hand thumb 1.5cm x 0.5 cm inner surface.
(iii) Swelling left leg thumb, complain of pain.

The doctor had opined that the duration of the injuries was 3 to 4 hours old. All injures were simple and caused by sharp edged instrument. The doctor had opined that these injuries could be caused by some sharp edged weapon. The doctor had stated in his cross examination that these injuries could be caused by a sharp pointed stone.

When he was cross examined he stated that these injuries could be caused by the sharp edged weapon and also by blunt weapon. He again tried to clarify that he examined the injury by a magnifying glass. He further stated that the duration was fresh and he had mentioned the time and as such he did not mention the colour of the injury in his medical report. Lastly, he had stated that it was his first case, therefore, he had used the magnifying glass, by which he found skin cuts and as such these injuries were incised wound. The trial court had passed certain strictures against the doctor. I feel that the trial court had rightly passed the strictures against the doctor. The doctor had entirely demolished the case of the prosecution. The oral testimony of the prosecution witnesses are not credible and cogent and the medical report did not corroborate the incident.

13. In view of the above discussion, I am of the view that the prosecution has not established the guilt beyond any reasonable doubt against the appellants. I find that the learned trial court has erred in convicting and sentencing the appellants. Hence, the appeal is allowed and the conviction and sentences against the appellants awarded by the trial court are set aside. The appellants are acquitted from the charges levelled against them. The appellants are on bail. They need not surrender. Their bail bonds are cancelled and sureties discharged.

14. Let the lower court record be sent back to the court concerned. Compliance report be submitted within three months.

(J.C.S. RAWAT, J.)

Dated 15.06.2006

LSR